

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date:

JUL 28 1992

Employer Identification Number: [REDACTED]

Key District: [REDACTED]

Form: 1041

Tax Years: ALL

Dear Applicant:

This is a final adverse ruling on your application for exemption under section 501(c)(3) of the Internal Revenue Code. This ruling was made on the basis of information submitted by you in writing throughout the application process, including your protest of our initial adverse ruling.

This final ruling is made for the following reasons: You have failed to establish that you will be operated exclusively for exempt purposes as required by section 501(c)(3) of the Code. You are primarily engaged in a trade or business not in furtherance of an exempt purpose. Furthermore, you have failed to establish that you are serving primarily public rather than private interests.

Even if you qualified for exemption, you would not qualify for exemption prior to [REDACTED], as you have not established that you were organized prior to that date. Furthermore, even if you had been established prior to that date, you have not shown good cause that you should be granted relief from the requirements of section 508(a).

Contributions to your organization are not deductible under section 170 of the Code.

You are required to file federal income tax returns on the above form. Based on the financial information you furnished, it appears that returns should be filed for the tax years shown above. You should file these returns with your key District Director for exempt organization matters within 30 days from the

[REDACTED]

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date of this letter, unless a request for an extension of time is granted. Returns for later years should be filed with the appropriate service center as indicated in the instructions for those returns.

If you decide to contest this ruling under the declaratory judgment provisions of section 7428 of the Code, you must initiate a suit in the United States Tax Court, the United States Claims Court, or the District Court of the United States for the District of Columbia before the 91st day after the date that this ruling was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Processing of income tax returns and assessment of any taxes due will not be delayed because a declaratory judgment suit has been filed under section 7428.

In accordance with section 6104(c) of the Code, the appropriate State officials will be notified of this action.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown above.

Sincerely yours,

(Signed) [REDACTED]

[REDACTED]
Director, Exempt Organizations
Technical Division

copy: [REDACTED]

copy: [REDACTED]

copy: [REDACTED]

[REDACTED] 7/22/92 [REDACTED] 7-22-92 [REDACTED] 7-22-92 [REDACTED] 7-22-92

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date: MAR 12 1991

Employer Identification Number: [REDACTED]

Key District: [REDACTED]

Dear Applicant:

You have earlier submitted an application for recognition of exemption under section 501(c)(4) of the Internal Revenue Code. Subsequently, in a letter dated December 14, 1990, you have indicated that you wish to apply for tax exemption under section 501(c)(3) of the Code and submitted a Form 1023. Accordingly, we have considered your qualification for exemption under section 501(c)(3) of the Code.

The information submitted indicates that you were created on [REDACTED] for charitable purposes. Article Third (D) of your trust instrument provides that the term "charitable purposes" shall be "limited to not for profit social welfare organization purposes within the meaning of section 501(c)(4) of the Internal Revenue Code....."

Your trustee is [REDACTED]. You represent that [REDACTED] has discovered the flaw in traditional human diet causing diseases, dementia, mental retardation and malevolence and has planned to establish a healing facility to be named "[REDACTED]." To protect the name, [REDACTED] caused the incorporation of a stock corporation called "[REDACTED]" on [REDACTED]. Also, on [REDACTED], [REDACTED] registered a business under the name of "[REDACTED]".

Your sole activity is to operate the business created by [REDACTED] which is a two-week long session consisting mostly of scheduled exercises and serving of special dietetic meals. The program is open to the general public but with first priority given to judges, second priority to scientists, third priority to government employees and last priority to the general public. A fee of \$[REDACTED] is required to participate in the program. You also plan to sell literature on topics that include transportation, commodity futures trading, buildings, diet, and exercise.

Section 501(c)(3) of the Code provides exemption to organizations organized and operated exclusively for charitable or other exempt purposes.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the federal government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the Income Tax Regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(a)-1(c) of the regulations provides that the words "private shareholder or individual" in section 501 refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized and operated exclusively for one or more exempt purposes unless it serves the a public rather than a private interest. Thus, to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creators, shareholders of the organization or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3).

In Better Business Bureau of Washington, D. C. v. United States, 326 U. S. 279 (1945), the Supreme Court interpreted the requirement in section 501(c)(3) that an organization be "operated exclusively" by indicating that in order to fall within the claimed exemption, an organization must be devoted to exempt purposes exclusively. This plainly means that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

As indicated above, to qualify for exemption under section 501(c)(3) of the Code, an organization must show evidence that it passed both the organizational and operational test.

In analyzing whether you meet the organizational test, we find that your creating document fails to limit your purposes to those described under section 501(c)(3) of the Code and does not provide for a dedication of assets for exempt purposes upon dissolution.

Therefore, you fail to meet the organizational test for exemption under section 501(c)(3) pursuant to sections 1.501(c)(3)-1(b)(1) and (4) of the regulations.

In analyzing whether you meet the operational test, we must determine that you are "operated exclusively" for one or more exempt purposes under section 501(c)(3) of the Code. In your operation, we find that your primary activity is offering a service on a fee basis similar to an ordinary trade or business. We also find that your primary activity is promoting the business established by your principal officer. Therefore, you are not operated exclusively for one or more exempt purposes because you are primarily engaged in a trade or business not in furtherance of an exempt purpose. See section 1.501(c)(3)-1(e)(1) of the regulations. Moreover, in your operation, you are serving primarily the interest of private individuals rather than the public by promoting the business of [REDACTED]. As such, you have shown again that you are not operated exclusively for one or more purposes pursuant to section 1.501(c)(3)-1(d)(1)(ii) of the regulations. See also Better Business Bureau.

Therefore, you do not qualify for exemption under section 501(c)(3) of the Code.

We have also considered whether you would qualify under section 501(c)(4) of the Code.

Section 501(c)(4) of the Code provides for the exemption of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization coming within the scope of this section is one which is operated primarily to bring about civic betterment and social improvements.

Section 1.501(c)(4)-1(a)(2)(ii) of the regulations provides that an organization is not operated primarily for the promotion of social welfare if its primary activity is carrying on a business with the general public in a manner similar to organizations which are operated for profit.

By engaging primarily in an activity similar to an ordinary trade or business, you are not operated primarily for the promotion of social welfare within the meaning of section 501(c)(4).

[REDACTED]

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Therefore, you also do not qualify for exemption under section 501(c)(4) of the Code.

Contributions to you are not deductible under section 170 of the Code.

You are required to file federal income tax on Form 1120.

You have the right to protest our ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this ruling as it relates to exemption under section 501(c)(3) of the Code in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director in Brooklyn, New York. Thereafter, if you have any questions about your federal income tax status, including questions concerning reporting requirements, please contact your key District Director.

The appropriate State Officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely yours,

(signed) [REDACTED]
[REDACTED]

Chief, Exempt Organizations
Rulings Branch 2

cc: [REDACTED]

3/12/91

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